



2 CFR Part 1800

[Document Number NASA-20-090; Docket Number-NASA-2020-0006]

RIN 2700-AE61

Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Direct final rule.

SUMMARY: This direct final rule amends NASA's regulations on Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, to align with the Office of Management and Budget's (OMB) recent amendments to its regulations on Grants and Agreements.

DATES: This direct final rule is effective on [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER] without further action, unless adverse comment is received by [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. If adverse comment is received, NASA will publish a timely withdrawal of the rule in the **Federal Register**.

ADDRESSES: Comments must be identified with RINs 2700-AE61 and may be sent to NASA via the Federal E-Rulemaking Portal: <http://www.regulations.gov>. Follow the online instructions for submitting comments. Please note that NASA will post all comments on the Internet without changes, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Corey Walz, 202-940-6581, corey.a.walz@nasa.gov.

SUPPLEMENTARY INFORMATION:

Direct Final Rule and Significant Adverse Comments

NASA has determined this rulemaking meets the criteria for a direct final rule because it makes nonsubstantive changes to NASA's regulations on Uniform Administrative Requirements, Cost

Principles, and Audit Requirements for Federal Awards to align with OMB's recent amendments to its regulations on Grants and Agreements. No opposition to the changes and no significant adverse comments are expected. However, if NASA receives significant adverse comments, it will withdraw this direct final rule by publishing a document in the Federal Register. A significant adverse comment is one that explains: (1) Why the direct final rule is inappropriate, including challenges to the rule's underlying premise or approach; or (2) why the direct final rule will be ineffective or unacceptable without a change. In determining whether a comment necessitates withdrawal of this direct final rule, NASA will consider whether it warrants a substantive response in a notice and comment process.

Background

Title 2 CFR part 1800, last amended on May 9, 2019 [84 FR 20240], adopts OMB's guidance in subparts A through F of 2 CFR part 200 as NASA's policies and procedures for uniform administrative requirements, cost principles, and audit requirement for Federal awards. NASA is amending 2 CFR part 1800 to align with the OMB's recent amendments to its regulations on Grants and Agreements published on August 13, 2020, at 85 FR 49506, which will become effective on November 12, 2020.

Statutory Authority:

The National Aeronautics and Space Act (the Space Act), 51 U.S.C. 20113(a), authorizes the Administrator of NASA to make, promulgate, issue, rescind, and amend rules and regulations governing the manner of its operations and the exercise of the powers vested in it by law.

Regulatory Analysis

Executive Order 12866, Regulatory Planning and Review and Executive Order 13563, Improving Regulation and Regulatory Review

Executive Orders (EO) 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). EO 13563 emphasizes the importance of

quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has been designated as “not significant” under section 3(f) of EO 12866.

Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires an agency to prepare an initial regulatory flexibility analysis to be published at the time the proposed rule is published. This requirement does not apply if the agency “certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities” (5 U.S.C. 603). This rule aligns NASA’s regulations on uniform administrative requirements, cost principles, and audit requirement for Federal awards with OMB’s recent amendments to its regulations on Grants and Agreements published on August 13, 2020, at 85 FR 49506, which will become effective on November 12, 2020, and does not have a significant economic impact on a substantial number of small entities.

Review Under the Paperwork Reduction Act

This direct final rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Review Under EO 13132

EO 13132, “Federalism,” 64 FR 43255 (August 4, 1999) requires that regulations be reviewed for federalism effects on the institutional interest of states and local governments, and if the effects are sufficiently substantial, preparation of the Federal assessment is required to assist senior policy makers. These amendments will not have any substantial direct effects on state and local governments within the meaning of the EO. Therefore, no federalism assessment is required.

Executive Order 13771 – Reducing Regulation and Controlling Regulatory Costs

This rule is not an EO 13771 regulatory action because this rule is not significant under EO 12866.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector, of \$100,000,000 or more in any one year, and it will not significantly or uniquely affect small governments.

List of subjects in 2 CFR Part 1800

Grant programs, Grants administration.

For reasons set forth in the preamble, NASA is amending 2 CFR part 1800 as follows:

PART 1800—UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

1. The authority citation for part 1800 continues to read as follows:

Authority: 51 U.S.C. 20113 (e), Pub. L. 97-258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and 2 CFR part 200.

2. Revise § 1800.3 to read as follows:

§ 1800.3 Applicability.

(a) This part establishes policies and procedures for grants and cooperative agreements awarded by NASA to non-Federal entities, for-profit organization, foreign organizations, and foreign public entities as allowed by 2 CFR 200.101. For supplemental guidance, NASA has adopted section numbers that correspond to those in the OMB guidance in 2 CFR part 200.

(1) Non-Federal entities must follow the policies and procedures appearing in subparts A through F of 2 CFR part 200 and as supplemented by this part.

(2) Foreign organizations and foreign public entities must follow the policies and procedures appearing in subparts A through E of 2 CFR part 200 and as supplemented by this part.

(3) U.S. and foreign for-profit organizations must follow the policies and procedures appearing in subparts A through D of 2 CFR part 200 and as supplemented by this part. The Federal Acquisition Regulation (FAR) at 48 CFR parts 30 and 31 take precedence over the cost principles in subpart E of 2 CFR part 200 for Federal awards to U.S. and foreign for-profit organizations.

(b) Throughout this part, the term “award” refers to both “grant” and “cooperative agreement” unless otherwise indicated.

(c)(1) In general, research with foreign organizations will not be conducted through grants or cooperative agreements, but instead will be accomplished on a no-exchange-of-funds basis. In these cases, NASA enters into agreements undertaking projects of international scientific collaboration. NASA’s policy on performing research with foreign organizations on a no-exchange-of-funds basis is set forth at NASA FAR Supplement (NFS) at 48 CFR 1835.016-70 and 1835.016-72. In rare instances, NASA may enter into an international agreement under which funds will be transferred to a foreign recipient.

(2) Grants or cooperative agreements awarded to foreign organizations are made on an exceptional basis only. Awards require the prior approval of the Headquarters Office of International and Interagency Relations and the Headquarters Office of the General Counsel. Requests to issue awards to foreign organizations are to be coordinated through the Office of the Chief Financial Officer, Policy Division.

3. Revise § 1800.5 to read as follows:

§ 1800.5 Publication.

The official site for accessing the NASA grant and cooperative agreement policies, including notices, internal guidance, certifications, the NASA Grant and Cooperative Agreement Manual (GCAM), and other source information is on the Internet at:

https://prod.nais.nasa.gov/pub/pub_library/srba/index.html.

Subpart A—Acronyms and Definitions

4. Revise § 1800.10 to read as follows:

§ 1800.10 Acronyms.

The following acronyms supplement the acronyms set forth at 2 CFR 200.0:

ACH	Automated Clearing House
AO	Announcement of Opportunity
CAN	Cooperative Agreement Notice

CFR	Code of Federal Regulations
CNSI	Classified National Security Information
EPA	Environmental Protection Agency
GCAM	Grant and Cooperative Agreement Manual
HBCU	Historically Black Colleges and Universities
LEP	Limited English Proficiency
MSI	Minority-serving Institutions
MYA	Multiple Year Award
NASA	National Aeronautics and Space Administration
NFS	NASA FAR Supplement
NPR	NASA Procedural Requirements
NRA	NASA Research Announcement
NSPIRES	NASA Solicitation and Proposal Integrated Review and Evaluation System
NSSC	NASA Shared Services Center
OMB	Office of Management and Budget
ONR	Office of Naval Research
RPPR	Research Performance Progress Report
STIP	NASA Scientific and Technical Information Program

5. Revise § 1800.11 to read as follows:

§ 1800.11 Definitions.

The following definitions are a supplement to the definitions set forth at 2 CFR 200.1.

Administrative Grant Officer means a Federal employee delegated responsibility for award administration; *e.g.*, a NASA Grant Officer who has retained award administration responsibilities, or an Office of Naval Research (ONR) Grant Officer delegated award administration by a NASA Grant Officer.

Effective date means the date work can begin under an awarded instrument. This date is the beginning of the period of performance and can be earlier or later than the date of signature on a

basic award. Expenditures made prior to the effective date are incurred at the recipient's risk unless prior written permission has been given by the Grant Officer.

For-profit organization means any corporation, trust, or other organization that is organized primarily for profit.

Grant Officer means a Federal employee responsible for the signing of the Federal award documents.

Historically Black Colleges and Universities (HBCUs) means institutions determined by the Secretary of Education to meet the requirements of 34 CFR 608.2 and listed therein.

Minority-serving Institutions (MSIs) means an institution of higher education whose enrollment of a single minority or a combination of minorities (minority meaning American Indian, Alaskan Native, Black (not of Hispanic origin), Hispanic (including persons of Mexican, Puerto Rican, Cuban, and Central or South American origin), Pacific Islander or other ethnic group underrepresented in science and engineering) exceeds 50 percent of the total enrollment, as defined by the Higher Education Act (HEA) (20 U.S.C. 1067k(3)).

NASA Technical Officer means the NASA official responsible for the programmatic, scientific, and/or technical aspects of assigned applications and awards.

Original signature means an authorized signature as described in this definition. If the system (such as NSPIRES) used to submit required documents allows for electronic signatures, then the submission of the documents, by the authorized representative of the organization serves as the required original signature. If, however, a paper copy submission is required, all documents submitted shall be appropriately signed in ink with an actual signature by the authorized representative of the organization.

Prescription is defined as the written instructions, to the Grants Officer, for the application of terms and conditions.

Research misconduct is defined in 14 CFR 1275.101. NASA policies and procedures regarding research misconduct are set forth in 14 CFR part 1275.

Summary of research means a document summarizing the results of the entire project, which includes bibliographies, abstracts, and lists of other media in which the research was discussed.

Subpart B—Pre-Federal Award Requirements and Contents of Federal Awards

§§ 1800.208, 1800.209, and 1800.210 [Redesignated as §§ 1800.209, 1800.210, and 1800.211]

6. Redesignate §§ 1800.208, 1800.209, and 1800.210 as §§ 1800.209, 1800.210, 1800.211.

7. Revise newly redesignated § 1800.209 to read as follows:

§ 1800.209 Certifications and representations.

The certifications and representations for NASA may be found in Appendix C of the GCAM, at: https://prod.nais.nasa.gov/pub/pub_library/srba/index.html.

8. Revise newly redesignated § 1800.211 to read as follows:

§ 1800.211 Information contained in a Federal award.

NASA waives the requirement for the inclusion of indirect cost rates on any notice of Federal award for for-profit organizations. The terms and conditions for NASA may be found in Appendix D of the GCAM at: https://prod.nais.nasa.gov/pub/pub_library/srba/index.html.

Subpart C—Post Federal Award Requirements

9. Revise § 1800.305 to read as follows:

§ 1800.305 Federal payment.

Payments under awards with for-profit organizations will be made based on incurred costs. Standard Form 425 is not required. For-profit organizations shall not submit invoices more frequently than quarterly. Payments to be made on a more frequent basis require the written approval of the Grant Officer.

10. Revise § 1800.306 to read as follows:

§ 1800.306 Cost sharing or matching.

In some cases, NASA research projects require cost sharing or matching. Where cost sharing or matching is required, recipients must secure and document matching funds to receive the Federal award.

11. Revise § 1800.312 to read as follows:

§ 1800.312 Federally-owned and exempt property.

Under the authority of the Chiles Act, 31 U.S.C. 6301 to 6308, NASA has decided to vest title to tangible personal property acquired with Federal funds in nonprofit institutions of higher education and nonprofit organizations whose primary purpose is conducting scientific research without further obligation to NASA, including reporting requirements. Award recipients that are not nonprofit institutions of higher education or nonprofit organizations whose primary purpose is conducting scientific research shall adhere to regulations at 2 CFR 200.312 through 200.316.

12. Revise § 1800.339 to read as follows:

§ 1800.339 Remedies for noncompliance.

NASA reserves the ability to impose additional conditions in response to award recipient noncompliance and terminate a Federal award in accordance with 2 CFR 200.339 through 200.343 and as set forth in the GCAM.

13. Revise § 1800.400 to read as follows:

§ 1800.400 Policy guide.

Payment of fee or profit is consistent with an activity whose principal purpose is the acquisition of goods and services for the direct benefit or use of the United States Government, rather than an activity whose principal purpose is Federal financial assistance to a recipient to carry out a public purpose. Therefore, the Grants Officer shall use a procurement contract, rather than a grant or cooperative agreement, in all cases where fee or profit is to be paid to the recipient of the instrument or the instrument is to be used to carry out a program where fee or profit is necessary to achieving program objectives. Grants and cooperative agreements shall not provide for the payment of any fee or profit to the recipient.

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